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In the Supreme Court of the United States

MICHAEL H. HOLLAND; WILLIAM P. HOBGOOD; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOT A. SEGAL; CARL E. VAN HORN; and GAIL R. WILENSKY, as Trustees of the United Mine Workers of America Combined Benefit Fund,
Petitioners,

v.

BELLAIRE CORPORATION; NACCO INDUSTRIES, INC.; and NORTH AMERICAN COAL CORPORATION.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONERS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

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REPLY BRIEF FOR PETITIONERS

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1. The Circuit Conflict Should Be Resolved Now.

Bellaire concedes, as it must, that the federal courts of appeals have disagreed about an important issue of statutory interpretation under the Coal Act. Bellaire also acknowledges, at least implicitly, that the Coal Act's health

care system should be administered uniformly throughout the nation. *Cf. Egelhoff v. Egelhoff*, 532 U.S. 141 (2001) (stressing importance of uniform administrative scheme for ERISA plans). Nonetheless, Bellaire urges the Court not to grant review. None of the reasons that Bellaire advances for this position are persuasive.

First, Bellaire asserts, without citation or other support, that there is "ample reason to believe" that the circuit conflict will not last long. Bellaire Opp. 4. All of the available evidence is to the contrary. The Fourth Circuit promptly denied rehearing and rehearing *en banc* in *Pardee*, and no judge in regular active service even called for a vote on whether the case should be reheard by the *en banc* court. The Sixth Circuit denied hearing *en banc* in this case and in *Peabody* (Pet. App. 15a), and there is no reason to think that the court will elect to reconsider *Dixie Fuel en banc* in some later case. Nor is there any reason to think, as Peabody suggests (Peabody Opp. 2), that the Commissioner, having prevailed in the Fourth Circuit in *Pardee*, will change her position and adopt *Dixie Fuel* if the pending petitions are denied. To the contrary, the conflict will persist and can be resolved only by this Court.

Bellaire also contends that denying review now would be desirable because that course would enable other circuits to opine on the issue, before review in this Court. Bellaire Opp. 4-5; *see also* Peabody Opp. 12-13 & n.9. Bellaire fails to explain, however, why in the circumstances of this case such additional appellate rulings are likely to be of assistance. This case presents a pure legal issue of statutory construction. The Sixth Circuit itself recognized as much in *Dixie Fuel,* 171 F.3d at 1059 (characterizing the issue as a "purely legal question"). The competing positions are discussed at length in *Dixie Fuel* and *Pardee*, the record in this case is complete, and Bellaire does not suggest any

additional information or legal argument that might emerge from another appellate decision.

Third, although Bellaire acknowledges that any coal operator wishing to challenge Combined Fund beneficiary assignments on the basis of *Dixie Fuel* is likely to do so in the Sixth Circuit (where the ruling in *Dixie Fuel* is binding), Bellaire asserts, again without citation or support, that jurisdiction and venue requirements may prevent some such operators from pursuing their claims in the Sixth Circuit. Bellaire Opp. 5; Peabody Opp. 12 n.9. But, as coal operators seeking to defend their selected forums have not hesitated to observe, numerous Combined Fund beneficiaries are located in the Sixth Circuit, and the Combined Fund makes substantial payments to health care providers in the Sixth Circuit for medical and hospital services and prescription drugs provided in the Sixth Circuit. The Commissioner of Social Security is amenable to suit in the Sixth Circuit, and it is therefore not at all clear that *any* coal operators, even ones without operations in the Sixth Circuit, would be precluded from bringing suit there to challenge Combined Fund beneficiary assignments. *See* 29 U.S.C. § 1451(d) ("An action under this section may be brought in the district where the plan is administered or where a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.").

Fourth, Bellaire completely ignores the practical question of what will happen to the large number of beneficiary assignments challenged here and in *Peabody* -- a total of approximately 900 assignments -- if this Court were to deny review now but subsequently were to conclude in another case that *Dixie Fuel* was wrongly decided. By that time, of course, the judgments in these cases would have become final, and respondents surely would argue that the Commissioner should be precluded from reinstating the affected assignments, even prospectively, notwithstanding

any error that this Court later may identify in the *Dixie Fuel* ruling. That argument might well generate a whole new round of litigation in the future, if review were to be denied now, only to be granted in a later case raising the *Dixie Fuel* issue.

Finally, Peabody suggests that review is not warranted because the conflict concerns "merely" a matter of statutory interpretation. Peabody Opp. 11. This argument is specious. This Court regularly reviews the "mere" construction and application of federal statutes. It did so more than 30 times last Term alone, and in nearly half of those cases the Court either noted a split between only two circuits or did not identify any circuit disagreement at all.

2. Although Combined Fund Beneficiaries Will Continue To Receive Benefits Even After The Decision Below, That Does Not Gainsay The Need For Review.

Respondents stress that the Sixth Circuit's decision does not deprive any Combined Fund beneficiaries of health benefits. Bellaire Opp. 2, 9; Peabody Opp. 7. On that basis, they argue that the Coal Act's "primary objective" has been satisfied and that there is no need for review. *Id.* Respondents' conclusion does not follow from their premise.

There is no question that in enacting the Coal Act Congress sought to protect and preserve retiree health benefits. That does not mean, however, that Congress was indifferent to the source of funding for such benefits. To the contrary, the proper allocation of financial responsibility for the health care of eligible beneficiaries was and is a central focus of the statute.

The very problem that Congress sought to address in enacting the legislation was that, under the pre-existing

collectively bargained regime, many employers (like Bellaire) had succeeded in avoiding any obligation to pay for the health care of *any* of the beneficiaries of the UMWA multiemployer system. They did so despite the fact that they previously had signed collective bargaining agreements referring expressly to lifetime health care not only for their own retirees but also for *all* of the beneficiaries of the UMWA multiemployer plans. To correct this problem, Congress determined, in the language of the statute, that "it is necessary . . . to identify persons most responsible for plan liabilities to stabilize plan funding . . . ." Pet. App. 16a. Congress therefore sought to ensure that as many Combined Fund beneficiaries as possible would be assigned to a specific former employer (or related person). Pet. 26-27.

Respondents do not deny this congressional objective, but they treat it as a mere sidelight or afterthought, a feature that Congress readily would have sacrificed in deference to the timetable for making the statutory assignments. This is a distortion of the statutory scheme. The statute does not speak of an "unassigned pool" or a "two-stage funding system." These are terms invented by respondents; they are not found in the Coal Act. It was a central component of Congress's approach that the number of unassigned beneficiaries be kept to an absolute minimum and that Combined Fund benefits be financed to the greatest extent possible by companies that were identified in accordance with the criteria set forth in Section 9706(a) of the statute. Review should be granted to ensure that this fundamental congressional goal is fulfilled.

3. The Availability Of Transfers From The Abandoned Mine Reclamation Fund Does Not Alter The Need For Review.

Respondents make much of the fact that Congress provided for annual transfers, beginning on October 1, 1995, from the Abandoned Mine Reclamation Fund to the

Combined Fund, to help pay for the health care of unassigned beneficiaries. Bellaire Opp. 9; Peabody Opp. 6-9. This fact, according to respondents, obviates any need for concern about the possibility that *Dixie Fuel*, if followed throughout the nation, would result in some 10,000 more unassigned beneficiaries than Congress intended. Peabody takes the argument one step further (*id.* at 9 n.6), observing that under the Coal Act the annual AML Fund transfer can be as great as "the amount of expenditures" that the Trustees incur for unassigned beneficiaries (*see* Pet. App. 50a) and that as a consequence, because the Combined Fund's annual per beneficiary expenses currently are running higher than the annual health care premium assessed against assigned operators, the Combined Fund actually could receive more total revenue if the number of unassigned beneficiaries were to be increased.

These arguments by respondents highlight the distortions that respondents and *Dixie Fuel* would inject into the statutory scheme. To be sure, Congress made certain AML Fund monies available to defray the unassigned beneficiary expenses of the Combined Fund. That does not mean, however, that Congress intended to endorse a limitless depletion of the AML Fund, or to make the amount of the annual transfer depend on how quickly SSA could complete the assignment process. Rather, the congressional willingness to tap the AML Fund was closely linked to the policy determination that the number of unassigned beneficiaries should be kept to an absolute minimum. Congress thus sought to limit the amount of public funds that would be expended for the Combined Fund, not to make that amount subject to the degree of SSA's administrative efficiency in assigning Combined Fund beneficiaries.

4. Respondents' Effort To Shift Their Combined Fund Obligations To Other Operators Also Supports Review Now.

Bellaire declares that it "stands prepared to pay its full *pro rata* share" in the event an unassigned beneficiaries premium is assessed. Bellaire Opp. 10; *see also* Peabody Opp. 7. This gracious acquiescence in no way undermines the need for review. As the Trustees observed in the Petition (Pet. 16), and as Bellaire does not and cannot dispute, Bellaire seeks to avoid the obligation to pay per beneficiary premiums for approximately 270 assigned beneficiaries. It hopes to obtain this windfall not only at the expense of the AML Fund, but also at the expense of other assigned operators.

The Coal Act did not authorize any AML Fund transfers during the first three Combined Fund plan years, a fact whose significance respondents ignore. If Bellaire and other operators are successful in avoiding assignments made after September 30, 1993, the beneficiaries in question will be treated as unassigned as of February 1, 1993, when the Combined Fund began providing benefits, and additional assessments will need to be made against all assigned operators. That is because an increase in the number of unassigned beneficiaries will result in a corresponding increase in the portion of the $210 million total transfer from the 1950 Pension Plan that will need to be devoted to unassigned beneficiaries. That, in turn, will reduce the amount of the Pension Plan transfers that will remain available to pay for death benefits and to reduce the first-year health benefit premiums for assigned beneficiaries. *See* 26 U.S.C. § 9705(a)(3) (Pet. App. 33a).

Using an "inception billing" accounting method, the Combined Fund makes annual adjustments for changes in beneficiary assignments, which are routinely made

retroactive to February 1, 1993. These adjustments recalculate assigned operators' prior premium assessments and, as necessary, impose supplemental assessments for that portion of death benefit premiums and first-year health benefit premiums that no longer can be defrayed from the Pension Plan's transfers, as a result of increases in the number of unassigned beneficiaries. When this sort of recalculation occurred after the decision in *Eastern Enterprises*, the supplemental assessments against assigned operators generated a further round of litigation. *See Apogee Coal Co. v. Holland*, No. 98-C-2858-S (N.D. Ala. June 1, 2001) (dismissing case in which assigned operators challenged supplemental premium assessments after *Eastern*), *appeal pending* (11th Cir.).

In addition, of course, the amount of interest earned by the AML Fund is not unlimited. If in future years that interest proves insufficient to cover all unassigned beneficiaries, the assigned operators will be asked to pay an unassigned beneficiaries premium. Even given Bellaire's admirable willingness to pay its *pro rata* share of such a premium, Bellaire still would be paying only a small fraction of the amount that it should be paying for the approximately 270 beneficiaries at issue in this case. Review is warranted to restore the financial obligation to the operators that properly should bear it and to avoid needless supplemental assessments and related litigation.

5. The Various Dates Set Forth In The Coal Act Do Not Support The Ruling Below.

Bellaire next argues, incorrectly, that the various "key dates" set forth in the Coal Act support the ruling in *Dixie Fuel*. Bellaire Opp. 10-12. This Court, however, already has rejected the argument that the existence of such a timetable divests an agency of authority to act after statutorily specified dates. In *General Motors Corp. v. United States*, 496 U.S.

530 (1990), for example, an environmental protection statute contained a statutory deadline and an integrated timetable that reflected the urgency of establishing air-pollution controls. *Id.* at 533, 536. The agency did not comply with all of the timing provisions. Although compliance with the statutory timetable would have promoted the underlying objective of reducing air pollution, this Court stated that "[i]n the absence of a specific provision suggesting that Congress intended to create an enforcement bar, we decline to infer one." *Id.* at 542 (relying on *Brock v. Pierce County*, 476 U.S. 253 (1986)).

Although Bellaire repeatedly suggests that the Coal Act's system for calculating health care premiums somehow makes it essential that the number of unassigned beneficiaries be determined once and for all by September 30, 1993 (Bellaire Opp. 2, 10-12; *see also* Peabody Opp. 13-14), it nowhere explains why this should be the case and, in fact, it is not. The number of unassigned beneficiaries has been changed on numerous occasions throughout the history of the Combined Fund, and indeed, as Peabody admits (Peabody Opp. 14), the statute expressly contemplates that possibility, both when the Commissioner determines under Section 9706(f)'s appeals process that an initial assignment was incorrect, and when an assigned operator and its related persons cease to be "in business" within the meaning of the Coal Act. Both of these scenarios have occurred with some frequency since September 30, 1993, and, as a consequence, the number of unassigned beneficiaries, and the "applicable percentage" described in Section 9704(f) of the statute (Pet. App. 29a-30a), have been adjusted annually.

The same sort of adjustment occurred after the decision in *Eastern Enterprises*. After *Eastern*, SSA reviewed the circumstances of all assigned operators and, for those that SSA concluded were similarly situated to Eastern, SSA declared the operators' beneficiary assignments void.

Some of these beneficiaries could be reassigned, but many could not. Thus, *Eastern*, which was not decided until the Combined Fund's sixth plan year, significantly increased the number of unassigned beneficiaries, and it did so as of February 1, 1993.[1/] Respondents are simply wrong, therefore, when they suggest that, for the Coal Act's premium assessment and calculation system to work, the number of unassigned beneficiaries had to be determined once and for all by September 30, 1993.

Bellaire also suggests that Congress might have intended that SSA cease making assignments before October 1, 1993 to promote "predictability" and "certainty." Bellaire Opp. 12. But Bellaire offers no evidence whatever that this was part of the congressional plan. Likewise, there is no support for Peabody's contention (Peabody Opp. 15, 16-17) that Congress may have intended to limit the assignment task to a fixed date to conserve SSA's resources, even at the expense of the Coal Act's carefully crafted financing scheme. This purely speculative argument runs directly counter to the historical record; Congress, though aware that SSA made assignments after September 30, 1993, did nothing to arrest that process or even to express disapproval of it.

CONCLUSION

For these reasons, as well as those set forth in the petition, the petition for a writ of certiorari should be granted.

1/ Despite Peabody's suggestion to the contrary (Peabody Opp. 11), the approximately 10,000 assignments potentially affected by *Dixie Fuel* (*see* Pet. App. F, 53a, ¶ 4) do not count any assignments already declared void as a result of *Eastern*.

Respectfully submitted,

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